

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

RUFUS TERRY McDOUGALD, JR.,)	
)	
Plaintiff,)	
)	
v.)	CASE NO. 1:18-CV-748-WKW
)	
CARLA WOODALL, Houston)	
County Circuit Court Clerk;)	
DOUGLAS A. VALESKA, District)	
Attorney; and PATRICK B. JONES,)	
III, District Attorney,)	
)	
Defendants.)	

ORDER

On November 2, 2018, the Magistrate Judge filed a Recommendation to which no timely objections have been filed. (Doc. # 5.) After independently reviewing the record and considering the Recommendation, the court finds that the Recommendation is due to be adopted, albeit with one modification.

The Recommendation cites a 1998 decision known as *Mastroianni II* for the well-established principle that when prosecutors act as “advocates for the state,” they are “entitled to absolute immunity for that conduct.” *Mastroianni v. Bowers*, 160 F.3d 671, 676 (11th Cir. 1998). That principle is good law. *See Rehberg v. Paulk*, 611 F.3d 828, 838 (11th Cir. 2010) (“A prosecutor enjoys absolute immunity from allegations stemming from the prosecutor’s function as advocate.”) (quoting *Jones*

v. Cannon, 174 F.3d 1271, 1281 (11th Cir. 1999)), *aff'd*, 566 U.S. 356 (2012); *see also Buckley v. Fitzsimmons*, 509 U.S. 259, 272 (1993); *Imbler v. Pachtman*, 424 U.S. 409, 426, 431 (1976). But the Eleventh Circuit vacated *Mastroianni II* in 1999. *Mastroianni v. Bowers*, 173 F.3d 1363, 1364 (11th Cir. 1999) (*Mastroianni III*).¹ The Recommendation therefore should not have cited *Mastroianni II*, and the court modifies the Recommendation by striking the citation to *Mastroianni II*.

It is therefore ORDERED that:

1. The Recommendation of the Magistrate Judge (Doc. # 5) is ADOPTED AS MODIFIED.
2. This case is DISMISSED without prejudice as to Defendant Woodall.
3. This case is DISMISSED WITH PREJUDICE as to Defendant Valeska and Defendant Jones.

A separate Final Judgment will be entered.

DONE this 10th day of December, 2018.

/s/ W. Keith Watkins

CHIEF UNITED STATES DISTRICT JUDGE

¹ *Mastroianni III* itself held that a prosecutor is entitled to absolute immunity for acts that “occur in the course of his role as an advocate for the State.” 176 F.3d at 1366 (citation omitted).